

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HICKSVILLE WATER DISTRICT,	*	Case No. 19-CV-6070 (PKC)
	*	
	*	
Plaintiff,	*	Brooklyn, New York
	*	May 19, 2022
v.	*	
	*	
JERRY SPIEGEL ASSOCIATES,	*	
et al,	*	
	*	
Defendant.	*	
	*	
* * * * *		

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

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1 (Proceedings commenced)

2 THE COURT: All right. Good morning again. This is
3 Judge Levy, we're here on Docket No. 19-CV-6070. Hicksville
4 Water District v. Jerry Spiegel Associates, et al.

5 Will counsel please state their experience -- their
6 appearances for the record, starting with the plaintiff?

7 MR. NAPOLI: Good morning, Judge Levy. This is Paul
8 Napoli for Hicksville Water District with my associate, Lilia
9 Factor.

10 MR. MONDSHEIN: Good morning, Your Honor. My name
11 is Lee Mondschein. I am the attorney for Royal Guard Fence,
12 and for defendant, Genoa Properties.

13 MR. LAST: Good morning, Your Honor. This is
14 Bennett Last from Gilbride, Tusa, Last & Spellane. We
15 represent Defendant Metpar.

16 MR. RIESEL: Your Honor, this is Daniel Riesel and
17 Dane Waran (ph) from Sive, Paget & Riesel. We represent
18 ADCHEM and RPG Enterprise -- RPJ Enterprsis.

19 MS. KNAUER: Good morning, Your Honor. Elizabeth
20 Knauer from Sive, Paget & Riesel. We represent ICA 270 to 280
21 LLC (indiscernible)**1:09 to 280 LLC, GSM 270 to 280 LLC, SAF
22 270 to 280 LLC, ITA 209 LLC, FED 209 LLC, GSM 290 LLC, SAF 209
23 LLC, and 325 Duffy Owner LLC, also known as the Duffy Avenue
24 Owners. Thank you, Your Honor.

25 MS. TARPEY: Good morning, Your Honor.

1 MR. MCGAHREN: Good morning, Your Honor.

2 MS. TARPEY: This is Colleen Tarpey. I also have,
3 from my office, Marky Suazo and Bill Lolis. We're here for
4 Arkwin Industries, Inc.

5 MR. MCGAHREN: Good morning, Your Honor. This is
6 John McGahren from Morgan, Lewis & Bockius, representing the
7 GTE Sylvania defendants.

8 MR. LEFF: Good morning, Your Honor. This is
9 Richard Leff from BBC Law, representing Solder (ph) Metco.

10 MR. LUFRANO: Good morning, Your Honor. This is
11 Robert Lufrano with Epstein Becker & Green for Island
12 Transportation Corporation.

13 MS. PASCALE: Good morning, Your Honor. This is
14 Susan Pascale for B&G Lighting, Spectrum Signs.

15 MR. FELDLMAN: Good morning, Your Honor. This is
16 Joshua Feldman from Certilman Balin for 750 Summa Avenue LLC,
17 Equity Share I Associates, and (indiscernible)**02:26 LP.

18 MR. LUCIC: Good morning, Your Honor, this is Robert
19 Lucic from Sheehan Phinney Bass & Green on behalf of IMC
20 Eastern Corporation.

21 MR. ROSS: Good morning, Your Honor.

22 MR. PETERS: Good morning, Your Honor.

23 MR. ROSS: Cye Ross, representing Westbury Jeep and
24 Westbury Realty.

25 MR. PETERS: And good morning, Your Honor. This is

1 Michael Peters representing -- from the West Firm,
2 representing Jerry Spiegel Associates, Frost Street
3 Associates, and Next Millenium Realty. And I believe my
4 colleague, David Kivaprisade (ph) is also on the line.

5 MR. KIVAPRISADE: That's correct.

6 MR. RUSKIN: Good morning, Your Honor. This is Bill
7 Ruskin from the Law Office of William Ruskin on behalf of
8 defendant, Efficiency Systems Company.

9 MR. BRANCIFORTE: Good morning, Judge. This is
10 Ralph Branciforte from the law firm of Sahn Ward
11 (indiscernible)**3:26, representing the defendants Utility
12 Manufacturing and Next Equities.

13 MR. HAMMACK: Good morning, Your Honor. This is
14 David Hammack representing the United States Department of
15 Energy.

16 MR. PRICE: Good morning, Your Honor.

17 MR. BUBLICK: Good morning, Your Honor.

18 MR. PRICE: It's Attorney Thomas Price, also
19 representing Department of Energy.

20 MR. BUCKLEY: Good morning, Your Honor, this is
21 Kevin Buckley with Mound Cotton Wollan & Greengrass,
22 representing FUJI Hunt.

23 MR. HOOKER: Good morning, Your Honor --

24 MS. CURRY: Good morning, Your Honor. This is Judi
25 Curry --

1 MR. HOOKER: -- I representing Vishay GSI. I'm here
2 with my associate, Kelly Stoll.

3 MS. CURRY: Good morning, Your Honor. Judi Abbott
4 Curry from Harris Beach, representing Lonie Jo Realty.

5 MR. SERFATY: Good morning, Judge. This is Judah
6 Serfaty from Rosenberg Calica & Birney, representing Air
7 Techniques, Inc.

8 THE COURT: Is there anyone who has not placed their
9 appearance on the record?

10 (No audible response)

11 THE COURT: All right. I think -- well, let me
12 start with plaintiff's counsel. What do you see as on the
13 agenda for today?

14 MR. NAPOLI: I think frankly, Your Honor, I think
15 we're in good shape. By this morning we are supposed to
16 inform the Court whether or not we'd be agreeable to
17 mediation, and the plaintiffs are agreeable to mediation. I
18 should point out that we have been engaging with some of the
19 defendants privately, and it looks like potentially
20 successfully. But we would welcome a mediation with the court
21 appointed mediator.

22 The second issue really, which would be here, would
23 be the scheduling, and that has been taken care of by the
24 judge's order after we had competing letters. We have an
25 order now in place.

1 The parties just need, among themselves, to work out
2 an ESI protocol, but we should be able to meet and confer and
3 have something put together in the next week or so, so not to
4 interfere with discovery. Those, to me, were the big issues.
5 I think really, you know, getting the defendant's response on
6 mediation would be the most important thing.

7 THE COURT: Okay. Do the defendants fall into
8 several groups that are represented by one particular point of
9 view, or are we looking at many different perspectives here?

10 MR. NAPOLI: Your Honor --

11 UNIDENTIFIED SPEAKER: (Indiscernible)**6:20.

12 MR. NAPOLI: -- if I could, Your Honor, just say one
13 thing before some -- we've been trying to coordinate with the
14 defendants, and I don't know if they've picked one person to
15 coordinate with us. We've been speaking to Mr. Leff, who I've
16 had some experience with in the past in front of Judge
17 Hellerstein, and he has been very kind to coordinate where
18 most of the defendants don't. There are times when we speak
19 to them individually.

20 THE COURT: Okay. And, Mr. Leff, would you
21 (indiscernible)**6:51?

22 MR. LEFF: We -- sure. We have -- the defendants
23 have formed kind of an ad hoc -- ad hoc defense liaison group.
24 We have not had a group call to discuss going to mediation or
25 not. There was -- everybody was filing their answers to the

1 amended complaint and cross-claims, and there were issues to
2 get that -- the initial discovery order locked down. And now
3 that we have dates, I think everybody -- and there's the
4 initial disclosures that are due, I think the beginning of
5 June. I think everybody was going to go for that, and at that
6 point after initial disclosures were exchanged, we were going
7 to regroup, but we haven't gotten further than that just
8 because there have been, like I said, deadlines that people
9 have been meeting at the moment.

10 THE COURT: So what would you purpose? Do you need
11 a week or two to figure out whether you'll all have a unified
12 position of who wants to go to mediation or not? Does that
13 sound (indiscernible)**07:50 from your perspective?

14 MR. LEFF: I mean, we certainly probably need a week
15 or two to kind of -- you know, as you heard from everybody
16 answering on the call, there is, you know, about 20 of us to
17 coordinate. This many peoples' calendars takes a little bit,
18 but we are certainly happy to kind of coordinate a phone call
19 with everyone within the next two weeks, and then we can kind
20 of -- we can get back to the Court as to what the collective
21 position is. So I could probably get back to you in three
22 weeks. You know, we could do it by email and we can kind of
23 advise the Court what we think for next steps on that -- in
24 that regard.

25 THE COURT: So your proposal is that you'll meet and

1 confer with your colleagues and file a status report in three
2 weeks?

3 MR. LEFF: Sure.

4 THE COURT: Okay. Would that be --

5 UNIDENTIFIED SPEAKER: Your Honor --

6 THE COURT: -- (indiscernible)**08:41 plaintiff, or
7 would that be just on behalf of some of the defendants?

8 MR. LEFF: I think that would just be on behalf of
9 defendants.

10 THE COURT: Okay. Who else would like to be heard
11 from defendant's side?

12 MR. RUSKIN: Your Honor, my name is Bill Ruskin. I
13 represent Efficiency Systems.

14 And I don't know when the appropriate time to raise
15 it is, but one of the things that Morgan Lewis's letter to
16 Your Honor on April 8th, 2022 raised, was whether the Court
17 should consider entering a *Lone Pine* order as a case
18 management technique in this case. And the issue is one
19 that's opposed by the plaintiff, it's one that's passionately
20 endorsed by a number of the defendants, particularly the de
21 minimis defendants. And at the appropriate time, Your Honor,
22 I'd like to have a couple of minutes to discuss what the *Lone*
23 *Pine* concern is in this case.

24 THE COURT: All right. Is that something that needs
25 to be resolved before we talk about mediation?

1 MR. RUSKIN: Well, it does from the point of view of
2 Efficiency Systems, and I can't speak for other de minimis
3 defendants, although I've spoken to at least 10 other
4 defendants who view themselves as de minimis.

5 My client is uninsured and is a small company in the
6 Hicksville Water District area, and we don't know what the
7 claims are against our client. We filed a motion to dismiss.
8 It was denied. But I can represent to the Court that no
9 environmental sampling has ever been conducted on our property
10 or to our knowledge, under our property, and so we wouldn't
11 know what it is we're mediating.

12 We -- I don't have the -- my client -- I've not
13 attended a single deposition in this case, although there have
14 been over -- I believe there have been a great number of
15 depositions taken already. I've not reviewed any documents,
16 although Mr. Napoli stated during the Rule 26 Call that he
17 could produce 8 million documents produced in the SCWA --
18 there's a *Dowell* (ph) litigation within a couple of weeks.

19 All that the defendants who are seeking a *Lone Pine*
20 order want, and this really has to do with serving as a basis
21 for a mediation discussion, is some basic information as to
22 why they've been named in this case. What 1,4 Dioxane is
23 attributable to the operations of those defendants who are
24 seeking this case management order relief?

25 And it's not something -- now, the Napoli firm has

1 been involved in -- according to Lexis, eight *Lone Pine* cases.
2 Some -- in some cases, they've prevailed and convinced the
3 court that it's not appropriate. In many other cases, such as
4 in the District of Pennsylvania, the District of what --
5 Western District of New York, the Eastern District of
6 Missouri, the court has said that a *Lone Pine* is a proper
7 procedural tool to use.

8 And I would argue, Your Honor, that in this case,
9 basic fairness is required to, as the Western District of New
10 York said, to identify and cull potentially meritless claims
11 at an early stage in litigation.

12 And I don't mean to monopolize this call with this
13 issue, but my client isn't prepared to go to mediation. I've
14 been a mediator for the Southern District of New York for 25
15 years. I've mediated personally over 200 cases, but I can't
16 go -- I couldn't go to mediation in a case where I have no
17 idea what the claims are. And my client can't afford to send
18 me to a mediation, or to prepare for the mediation, because he
19 doesn't have any money.

20 And so I don't mean to be crying poor, but I think
21 that there are important considerations that some of the
22 smaller defendants in this case, really seeking some basic
23 fairness in terms of the procedure to be applied in a case,
24 which is now being -- it now will last, through fact and
25 expert discovery, for over two more years.

1 THE COURT: So if -- what are you asking the Court
2 to do? If a *Lone Pine* order were --

3 MR. RUSKIN: What I'm asking --

4 THE COURT: -- (indiscernible)**13:39.

5 MR. RUSKIN: A *Lone Pine* order, Your Honor, would
6 require the plaintiffs to provide, with supporting affidavit
7 evidence, some basic information that would allow them to go
8 to the Court and say, you see, Your Honor, we do have a basis
9 for bringing Efficiency Systems in the case. In 1966, there
10 was a release of 1,4 Dioxane from their premises. That's the
11 basis for the claim.

12 Or there's groundwater testing beneath their
13 property that shows that there's 1,4 Dioxane there that's, you
14 know, heading directly toward our well. It's basically
15 something that provides assurances to the Court that this case
16 has been brought against a properly named claims.

17 I'm not suggesting that the plaintiffs should do all
18 their expert discovery, or that this is a substitute for
19 summary judgment. It's basically a well-established technique
20 that federal courts and circuit courts around the country have
21 all discussed, and at times acknowledged, admitting that there
22 are pros and cons to this procedure. But it would basically
23 allow me to go back to Efficiency Systems and say, you are in
24 this case because.

25 And right now, despite informal calls I've had with

1 Ms. Factor, the plaintiff's counsel, and having spent an
2 unreasonable -- a lot of money of my client's money in
3 preparing a motion to dismiss and a reply to the plaintiff's
4 opposition, I still don't know what this case is about. And
5 I'm not saying this -- I'm not posturing. I've done my due
6 diligence. I really think the plaintiffs have an obligation
7 when they bring a case of this magnitude against smaller
8 entities that they have an obligation to basically front-end,
9 at least to apprise them what the claim is, other than to say,
10 well, we found on the internet some reference to your client
11 in 1974, but not really -- if you read that -- if you read the
12 internet, it doesn't connect the dots at all. It's -- I'm
13 just at a loss to understand what I'm doing in this case, and
14 I'd like nothing better than to take Mr. Napoli at his word,
15 and to review those 8 million documents he can produce in some
16 other litigation, but my client just can't -- will not pay me
17 to do that and doesn't -- I'm basically -- this is an
18 existential threat to my client, and if he's going to be in
19 that case -- in this case, I want him to know that he's in the
20 case for a good reason.

21 THE COURT: All right. And I -- we didn't have
22 actual -- any full briefing on the *Lone Pine* order issue.
23 Each side I think briefly (indiscernible)**16:44.

24 MR. NAPOLI: Would you like me to respond, Judge?

25 THE COURT: Yeah. But I'm just actually looking at

1 the April 8th letter in which plaintiff was submitting that
2 neither the request, or nor the briefing of such a proposed
3 motion is within the proper scope of what the parties were
4 asking to do at this juncture.

5 So yes, let me hear from counsel at this point. Go
6 ahead.

7 MR. NAPOLI: I have several points, Judge. First, a
8 *Lone Pine* order is used rarely, it's defeated most of the
9 times, and it's used in mass tort litigation that's mature,
10 where we have a good sense of what type of cases should be
11 involved. I cannot think of the last time a *Lone Pine* order
12 was imposed in a case that I was on. This is not the type of
13 case, okay, that involves the need for a *Lone Pine* order.
14 They have a complaint, they have the right to do the
15 discovery. I wanted a year discovery. The defendants asked
16 for two years of discovery. I did not ask for two years of
17 discovery.

18 My phone is always open to Mr. Ruskin to talk about
19 the case, but it's inappropriate at this time to have a *Lone*
20 *Pine* order. They want to make a motion for a *Lone Pine* order,
21 they can go right ahead and we will oppose it. 99.9 percent,
22 they're going to lose because they don't meet any of the
23 criteria when it comes to a *Lone Pine*.

24 So he should know full well why he's in the case.
25 They own property in one of the most contaminated sites on

1 Long Island that's contributing to plumes that are causing my
2 client to have to pay hundreds of millions of dollars to
3 remediate, treat, and have operations and maintenance for the
4 next 50 years to clean up the site.

5 So you know, it's -- he's filed his motion. If he
6 wants to file another one, I can't stop him, you know, but it
7 shouldn't just be this ad hoc at a status conference, you
8 know, let's impose a *Lone Pine* order in a case that, first of
9 all doesn't fit the criteria, is not the type of case you
10 would even have it on, so I mean, that's all I really think I
11 need to say at this point.

12 THE COURT: Uh-huh.

13 MR. MCGAHREN: Your Honor, this is John McGahren.
14 If I might be heard on this? I support a lot of what Mr.
15 (indiscernible)**19:010 had to say, and disagree a great deal
16 with what Mr. Napoli had to say.

17 But getting back to the question of mediation and
18 groups that Your Honor asked about, it is important for the
19 defendants to understand which wells the plaintiffs believe
20 that their clients are linked to. And they did that in their
21 first complaint, which was withdrawn and an amended complaint
22 took away the wells that were allegedly connected to different
23 defendants. It's important information, and this is not a
24 litigation that's happened in isolation. The Hicksville Water
25 District is involved in many litigations and many settlements.

1 They know the capture zones are their plumes, and that's
2 important information to narrow this litigation.

3 THE COURT: Does anyone else wish to be heard? I'm
4 not deciding the *Lone Pine* issue without briefing, and I will
5 say that I've done a number of environmental cases, circuit
6 cases, and other case, and this is actually the first *Lone*
7 *Pine* order request I've had. I've had cases with numerous
8 parties. So I'll be looking at this carefully and with
9 interest, and the questions really are questions of timing.

10 But what I wanted to know was, first and foremost,
11 who is ready to go to mediation, and would that be an
12 efficient way at this point in the litigation to see if we can
13 resolve some of the issues that concern parties that don't
14 have the money to litigate at this point, or that would like
15 to find a more cost effective way to resolve the disputes.

16 So if anybody would like to be heard, first of all,
17 on the mediation issue, who has a different point of view from
18 one that's been suggested so far, I'd like to hear it.

19 MR. MCGAHREN: Well, Your Honor, it's John McGahren
20 again, if I might just say, my client is amenable to
21 mediation.

22 THE COURT: Okay.

23 MR. MONDSHEIN: And this is Lee Mondschein for Royal
24 Guard in general. We will also participate in the mediation.

25 MR. LAST: This is Bennett Last for Metpar. As

1 again, a defendant that views itself as a de minimums
2 involvement, we'd be happy to engage in mediation if it would
3 be a more cost-effective method, because the expense of this
4 could put the company out of business.

5 THE COURT: Uh-huh. All right. Before I hear from
6 anyone else, in terms of mediation, one concern is the
7 question of timing. (Indiscernible)**21:53 time to engage in
8 mediation before extensive expenses are incurred and if so,
9 what kind of information, if any, could be shared among the
10 parties to prepare you for mediation?

11 MR. NAPOLI: Well, Your Honor, this is Paul Napoli,
12 the plaintiff again. Like I said in the beginning, we have
13 begun conversations before the Court asked for suggestion of
14 mediation, with a number of defendants, and we've been meeting
15 with them, presenting information. Some of them have
16 requested additional information from us, which we have been
17 providing as it's available.

18 I think we are -- we are ready to present, and if
19 the Court could recommend the mediator, whoever wants to
20 participate, we'd be ready to do that, and we do take in
21 account the wherewithal of the various defendants. We do not
22 want to see anybody go out of business. But as a municipal
23 entity, we also have an obligation to our rate payers and the
24 people who are relying on the water in the community.

25 So we take that all into account. We think we're

1 ready and we could present and deal with those issues with the
2 mediator and each individual defendant.

3 THE COURT: Uh-huh.

4 MR. LEFF: Your Honor, it's Richard Leff, before we
5 -- if you don't mind. I think I -- if we go back to where we
6 started, I would ask that you just kind of let -- because
7 there are so many people, like -- and we haven't discussed it,
8 to kind of let us confer --

9 THE COURT: Uh-huh.

10 MR. LEFF: -- and kind of -- we'll report to you.
11 Maybe some are, maybe some aren't, maybe some are ready, maybe
12 some are not, and I think, you know, us not having conferred
13 with one another, I think we'd rather give you a more clear
14 picture than kind of an ad hoc, yes, like some are willing,
15 some are not willing, some are not willing to make a
16 commitment right now on the phone in front of everybody. So
17 I'd ask that you'd just let us confer and get back to you in
18 three weeks.

19 THE COURT: It sounds like a good plan to me. And
20 let's talk about, just for a minute, about what kind of
21 mediation we're talking about. Would this be a private
22 mediation, or would you be using the court's mediation panel?
23 What are you thinking? Or is that something you want to get
24 back to me on as well in a few weeks?

25 MR. NAPOLI: Yeah. Let us talk -- let us talk, Mr.

1 Leff and I, for the group, and get -- and then we can report
2 back to the Court.

3 THE COURT: Okay.

4 MR. NAPOLI: If we could set that down for a date in
5 three weeks, just to keep us all in order, that would be
6 great.

7 THE COURT: That would be good. And do -- is there
8 anyone who needs to have a further explanation of how the
9 court's mediation program works, or is that something that
10 you're familiar with, or you'd like to just read up on,
11 online?

12 MR. NAPOLI: I am familiar with it.

13 THE COURT: Okay, because in our program there is a
14 fee, although it's a much reduced fee, and you do get to
15 select your own mediator, and we have some mediators who, you
16 probably all know who have extensive experience in this area.

17 If anybody -- let me leave it this way, because it's
18 -- I don't want to put anyone in an awkward position. We have
19 an ADR administrator. Her name is Robin Weinstein. She's
20 fabulous. She's very hands-on. She knows all of our 175
21 mediators, and she is -- if you need any help either selecting
22 a mediator or have any questions about the program, she'd be
23 more than happy to answer them.

24 MR. LEFF: Thank you, Your Honor.

25 MR. NAPOLI: Thank you, Your Honor.

1 THE COURT: Yep. Okay. All right. So I think we
2 should just get out the calendars now and then we'll move from
3 there.

4 So today is May 19th. All right, I have a criminal
5 arrangement in three weeks and you don't want to sit around
6 waiting for me to finish arraignments. However, if we could
7 -- would Thursday the 2nd or Friday the 3rd of June be too
8 soon to make up your minds about --

9 MR. LEFF: I think that would be too soon, Your
10 Honor. If you could give us a --

11 THE COURT: Too soon?

12 MR. LEFF: -- week after that?

13 THE COURT: All right. Well, I'm on -- I've got
14 criminal arraignments the following week, which is probably
15 not great.

16 MR. LEFF: How about the 16th?

17 MR. NAPOLI: If -- yeah, I'm fine the 16th. The
18 question -- should we send Your Honor a letter telling you if
19 we're amenable to mediation in a private -- or through the
20 court, and who is and who isn't? I don't think we need
21 everyone to be on board.

22 THE COURT: Yeah, you can file a written status
23 report. That would be just fine, and I can -- yeah, we -- in
24 fact, no one needs to be on. We don't need to have a
25 conference, or we can have a conference. Whatever you wish.

1 MR. NAPOLI: I would think --

2 MR. LEFF: How about we submit a letter to you by
3 the 10th, Your Honor, and then that will guide what we do
4 going forward. Maybe there will be a conference with some and
5 not others. We can decide. Because at the same time, you
6 know, this call, while we can attempt to pull it together
7 quickly, you know, all 20-something of us to have final idea
8 of going forward with the mediation, we all have to get
9 approval from your clients, right. So and that's more phone
10 calls and emails and then everybody has to kind of get back.
11 The clients have to get back to their counsel, we have to get
12 back to each other. Like, it's just a little bit of
13 coordination and you know, herding of cats.

14 So maybe we write a letter -- you know, submit
15 something to you by the 10th, and that can clarify whether or
16 not there is another conference needed to be held, and if so,
17 with whom.

18 THE COURT: I think that's a great idea. Just give
19 me (indiscernible)**28:16.

20 MR. McGAHREN: Just one question. Your Honor, this
21 is John McGahren. One question. You know, we do have the
22 United States on the phone here and they're not going to be
23 part of any liaison group, so I think we need to factor in
24 their views on this. I'm just mentioning that.

25 THE COURT: Good point. And in other cases I've

1 had, we've had the main defendant, you, and then the United
2 States separately so there would always be a representative
3 from both. That's a very good point.

4 So who'd like to speak for the United States at this
5 point?

6 MR. PRICE: Thank you, Your Honor. Thomas Price.

7 I'm not -- I'm not sure exactly what the question
8 is. As far as whether or not the United States is amenable to
9 mediation, we would be willing to --

10 THE COURT: Oh, good.

11 MR. PRICE: -- consider that route.

12 THE COURT: Yes. I think the question is how you
13 want to organize your responses. Do you -- would you be part
14 of the larger group of defendants? Would you be speaking
15 separately, not through the -- whoever is speaking for the
16 larger group of defendants? And you don't have to answer that
17 question now. Just, if there's anything particular --

18 MR. PRICE: I think --

19 THE COURT: -- about the United States's position in
20 this case, then I think you could just put that in the status
21 report, or file your own status report.

22 MR. PRICE: I believe we can coordinate with the
23 other defendants in terms of responding to -- responding in a
24 status report.

25 THE COURT: Okay. All right. So there will be a

1 status report on June 10th with a road map as to how you'd
2 like to proceed with mediation.

3 MR. PRICE: Your Honor, I would say my colleague,
4 David Hammack, has reached out to other defendants last night
5 as far as cross claims. There is an issue as far as filing a
6 motion to dismiss the cross claims. I don't know that that --
7 that may affect, or come into play with mediation. I don't
8 know if David wants to weigh in on that.

9 MR. HAMMACK: Good morning, Your Honor. This is
10 David Hammack with the Department of Justice.

11 I don't know that our anticipated motion to dismiss
12 the defendant's tort cross claims against US DOE should have
13 any impact on mediation. I think the rest of the case will be
14 pretty much unaffected all together. We are still hoping to
15 file that motion, though, and I'm working with the cross-
16 claiming defendants on a briefing schedule, and perhaps we'll
17 be ready to propose a briefing schedule on June 10th.

18 THE COURT: All right. And just check with Judge
19 Chens's rules. She may have some rules as well.

20 MR. HAMMACK: Thank you, Your Honor.

21 THE COURT: Yes. So put everything that I need to
22 know in the status report on the 10th. It can be a joint
23 status report or just one from the defendants, but I would
24 like to know whether plaintiff agrees with the defendant's
25 position or what the plaintiff's response would be. That's

1 why I think a joint status report would probably make the most
2 sense.

3 MR. LEFF: That's fine. We will do that, Your
4 Honor.

5 THE COURT: Okay. So I will not schedule another
6 conference until I read your status report on the 10th.

7 MR. LEFF: Okay.

8 THE COURT: All right. Anything else?

9 MR. BRANCIFORTE: Judge, I have one clarification --

10 MR. LEFF: None.

11 MR. BRANCIFORTE: -- if I could, please? This is
12 Ralph Branciforte for Next and Utility.

13 Judge, I'm just taking a look at your April 18th
14 order. Apparently, it looks like you -- Your Honor scheduled
15 Rule 26 disclosures for June 1st. Will that be put on hold
16 pending this status report on June 10th, or should we just
17 proceed with the rule (indiscernible)**32:06?

18 THE COURT: Is there any reason to -- well,
19 (indiscernible)**32:09. Will it be helpful for the mediation
20 to do the disclosures, or will it be a burden?

21 MR. NAPOLI: No. We would like to go forward with
22 the disclosures and not delay any further. I think the --
23 that any information that's exchanged is going to be helpful,
24 not burdensome.

25 THE COURT: That's my view as well.

1 Okay. Anything else?

2 MR. LEFF: Not from the plaintiffs, Your Honor.

3 MR. LEFF: No, Your Honor.

4 UNIDENTIFIED SPEAKER: No, Your Honor.

5 UNIDENTIFIED SPEAKER: No, Your Honor.

6 THE COURT: Okay. Thank you. I look forward to
7 reading your report.

8 MR. LEFF: Thank you, Your Honor.

9 MR. NAPOLI: Thank you, Your Honor. Have a nice
10 week.

11 UNIDENTIFIED SPEAKER: Have a good day, everybody.

12 UNIDENTIFIED SPEAKER: Thank you, Judge.

13 UNIDENTIFIED SPEAKER: Thank you.

14 THE COURT: Thank you.

15 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

16 (Proceedings concluded)

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